

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

KIM SIFLINGER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC., a foreign
limited liability corporation, and SAFEWAY
INC., a foreign corporation,

Defendants.

NO. 2:23-cv-682

**STIPULATION AND ORDER REGARDING
THE PARTIES' LIMITED AGREEMENT TO
ARBITRATE ISSUES CONCERNING THE
SCOPE OF THE ALLEGED AGREEMENT TO
ARBITRATE**

NOTED FOR CONSIDERATION:
JULY 27, 2023

WHEREAS, on April 7, 2023, Plaintiff Kim Siflinger commenced this action (the "Action") by filing a Class Action Complaint in Washington Superior Court, King County, asserting claims against Defendants Albertsons Companies, Inc. and Safeway Inc. (together, "Defendants") under the Washington Consumer Protection Act, on behalf of herself and a proposed class;

WHEREAS, on May 10, 2023, Defendants filed a timely Notice of Removal to this Court (ECF No. 1);

WHEREAS, on May 12, 2023, Plaintiff filed a First Amended Class Action Complaint (ECF No. 10) (the "Complaint"), which is currently the operative complaint in this Action;

WHEREAS, on June 12, 2023, Defendants filed a Motion to Compel Arbitration or, in the Alternative, to Dismiss for Failure to State a Claim (ECF No. 23) (the "Motion");

STIPULATION AND ORDER REGARDING THE PARTIES' LIMITED
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Case No. 2:23-cv-00682-JNW

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1 **WHEREAS**, as part of the Motion, Defendants asserted that Plaintiff and Defendants
 2 are parties to a contract, substantially in the form set forth in Exhibit A to the Declaration of
 3 Kevin Michael, dated June 7, 2023 (ECF No. 24) (the “Terms of Use”), containing a provision
 4 (paragraph 24, the “Arbitration Clause”) in which Plaintiff and Defendants purportedly agreed
 5 to arbitrate certain disputes;

6 **WHEREAS**, Defendants further asserted in the Motion that the Arbitration Clause
 7 contains a delegation provision by which Plaintiff and Defendants purportedly agreed that any
 8 disputes concerning the scope of the Arbitration Clause would be decided by an arbitrator in
 9 the first instance;

10 **WHEREAS**, Plaintiff disputes that she entered into a binding agreement to arbitrate
 11 any disputes she may have or had with Defendants and disputes that the Arbitration Clause
 12 Defendants seek to enforce contains a delegation provision;

13 **WHEREAS**, Plaintiff further disputes that the scope of the Arbitration Clause would
 14 encompass the subject matter of this Action, even if such an enforceable arbitration
 15 agreement exists; and

16 **WHEREAS**, notwithstanding the foregoing, Plaintiff has nevertheless agreed to consent
 17 to confidential arbitration for the limited and sole purpose of determining whether the claims
 18 asserted in this Action fall within the scope of the Arbitration Clause;

19 **NOW, THEREFORE**, Plaintiff and Defendants (the “Parties”) jointly stipulate and agree as
 20 follows, subject to the Court’s approval:

21 1. The Recitals are incorporated herein by reference to the same extent and with
 22 the same force and effect as if fully set forth herein.

23 2. Plaintiff consents to arbitration under the terms set forth in the Arbitration
 24 Clause solely and exclusively for the limited purpose of determining the threshold issue of
 25 arbitrability—*i.e.*, whether the claims at issue in this Action fall within the scope of the
 26 Arbitration Clause. If the arbitrator determines that the claims at issue in this Action fall within
 27 the scope of the Arbitration Clause, Plaintiff agrees that she must arbitrate those claims

1 according to the terms of the Arbitration Clause and the Terms of Use.

2 3. In an effort to further streamline proceedings and promote judicial economy, the
3 Parties agree to produce certain documents and information (as specified in Schedule A hereto)
4 within 30 days of the service on Defendants of an arbitration demand by Plaintiff. The Parties
5 otherwise agree that the discovery requests served by Plaintiff on June 14, 2023, are moot and
6 no further response by Defendants is required.

7 4. The Parties agree that the arbitration will be kept confidential except that they
8 may disclose to this Court whether the arbitrator concludes that the claims at issue in this
9 Action fall within or outside the scope of the Arbitration Clause. Nothing in this stipulation
10 precludes either party from moving in this Court for entry of an order enforcing an arbitrator's
11 award or ruling under 9 U.S.C. § 9.

12 5. The Parties respectfully request that the Court stay this Action pending the
13 outcome of the arbitration proceeding described above and that this Court retain jurisdiction,
14 as necessary, pending the outcome of such arbitration proceeding.

15 6. The Parties further agree to submit joint status reports to the Court every 30
16 days until the stay described above is lifted. The first such status report shall be due on
17 September 1, 2023.

18 7. The Parties further agree that this Stipulation is without prejudice to the
19 dismissal arguments under Federal Rule of Civil Procedure 12(b)(6) that Defendants raised in
20 the Motion and that Defendants may renew those arguments after the arbitrator rules on the
21 threshold issue of arbitrability—*i.e.*, whether the claims at issue in this Action fall within the
22 scope of the Arbitration Clause.

23 This Stipulation may be signed in counterparts. A facsimile, PDF, or electronic signature
24 on this Stipulation shall have the same force and effect as an original signature.
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26
27

SCHEDULE A

For Production by Defendants

1. All documents reviewed by Kevin Michael in connection with preparation of his declaration dated June 7, 2023 (Dkt. No. 24), including but not limited to the documents constituting "ACI's records," as that phrase is used in Paragraph 8 of Mr. Michael's declaration.

2. A copy of the contractual terms that relate to Ms. Siflinger's Club Card account or to any "predecessor Club Cards," as available, and as described in paragraph 8 of Mr. Michael's declaration.

3. Documents reflecting any purchases made by Ms. Siflinger in her capacity as a visitor to or a user of any 'Site,' as that term is defined in the 'Terms of Use' attached as Exhibit A to the Declaration of Kevin Michael (ECF No. 24-1) and identifiable by reference to (a) Ms. Siflinger's Safeway and/or ACI account information or (b) other information specific to Ms. Siflinger (*e.g.*, credit card, email address, etc.).

For Production by Plaintiff

4. All documents within Ms. Siflinger's custody, possession, or control related to her Safeway Club Card and/or Safeway for U accounts, purchases she made using a Safeway Club Card and/or Safeway for U account, and her download and/or use of the Safeway mobile app (the application Safeway makes available to customers for download and use on a mobile device).

1 STIPULATED TO AND DATED this 27th day of July, 2023.

2 TERRELL MARSHALL LAW GROUP PLLC

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12 *Attorneys for Defendant Albertson's Companies,*
13 *Inc. and Safeway Inc.*

ORDER

IT IS SO ORDERED. This matter is STAYED pending the outcome of arbitration. The parties shall provide status reports every 30 days to the Court regarding the arbitration. The Clerk shall ADMINISTRATIVELY CLOSE the case subject to reopening upon completion of arbitration. If the arbitrator determines that the claims at issue in this Action fall outside the scope of the Arbitration Clause and are not required to be arbitrated under the Arbitration Clause and Terms of Use, Defendants may within 30 days of the arbitrator's determination renew in this Court the arguments they made under Federal Rule of Civil Procedure 12(b)(6) in the Motion (ECF No. 23).

DATED this 31st day of July, 2023.



Jamal N. Whitehead
United States District Judge